IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA, XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

AWMR'S MOTION FOR RECONSIDERATION OF STAY AND OPPOSITIONS TO CEMEX'S MOTION FOR RECONSIDERATION AND URGENT MOTION FOR STATUS CONFERENCE AND FOR BRIEF STAY AND ECOTERRA'S MOTION JOINING CEMEX

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC ("AWMR") ,** and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

AWMR just received an order granting CEMEX'S motion for miscellaneous relief and scheduling a status conference on October 5, 2007 at 3:00 pm. This order was issued in before AWMR could respond to CEMEX's motion for reconsideration seeking a reversal of this Court's Order of October 2, 2007 and further requested a for status conference and stay of this Order. In a predictable fashion, ECOTERRA joined CEMEX in its motions, all in a consorted attempt to stop or delay the enforcement of this Honorable Court's orders. CEMEX and ECOTERRA have

Dockets.Justia.com

demonstrated, previous to any orders issued by this Honorable Court, a pattern of delay in this case thwarting AWMR's coordinated attempts to access its property either by initially allowing the inspection and cancelling last minute or, when again coordinated with all parties, by arbitrarily refusing access to areas where AWMR's property was located. The court's record is well documented as to these previous efforts and AWMR's motions have been repeatedly substantiated.

Attorneys for the parties did meet on Monday Oct.1, 2007 for a Rule 26 meeting. AWMR was the only party to produce the Rule 26 disclosure letter at that time. Nevertheless a tentative discovery schedule was discussed and worked out; subject to confirmation with AWMR's (and other parties) witness schedules. When the court's order was brought up, and particularly plaintiff's request to visit the site on Tuesday (as AWMR had previously requested of counsel the week before), counsel for Cemex simply refused without providing any alternative date.

Since there were many items discussed during that meeting, counsel for all parties agreed to examine any proposed joint motion before filing. Cemex agreed to draft one and circulate it for approval, which it did. The very same day of the meeting and proposed draft joint motion (October 1, 2007), counsel for AWMR e-mailed all counsel, including attorneys for Cemex, that the proposal was unacceptable. (Exhibit 1- Jeffrey Williams' email to Jaime Toro and Antonio Valiente) Counsel for Cemex received that email and the following day responded to our refusal to accept the draft, requesting further clarification.

It is very surprising and totally misleading that Cemex's counsel would, the very next day, attach to its Motion Requesting Reconsideration, an Informative Motion Regarding Fed. R.Civ. Proc. 26(f) Conference and Discovery Schedule, clearly suggesting that this was somehow accepted, final and to be filed on behalf of all parties in the case. This was a circulated draft which was rejected by AWMR's counsel and definitely not signed by counsel. ***Although the undersigned's firm appears as a signatory to the informative motion, we had expressly informed counsel it was unacceptable and at no time did the undersigned counsel or Ada Sofia Esteves authorize the filing of such Informative Motion.***

The requirements proposed by Cemex before the court order could be executed by AWMR were simply too onerous. They presented major obstacles for Cemex's full and expedited compliance with the Order and attempted to limit AWMR's access to the Court. Cemex' outright rejection of Tuesday's visit, its failure to set forth a expedited alternative combined with its past history of delay and obstruction, AWMR had no choice than to notice Cemex and Ecoterra's counsel of its intentions to execute the courts orders on Thursday with a reasonable two-day advance notice. AWMR has designated the areas to be visited as described and attached to AWMR's Urgent Motion Docket No. 48. The Court has allowed AWMR's to remove its containers which will be done during that same day. There is no reason to further delay, stay or otherwise reconsider any of the court's orders. Although we are not against meeting with the Court, at this point, the Court's orders need to be respected and abided by Cemex and Ecoterra. AWMR has incurred in much time and expens in mobilizing a lot of personnel to carry out the orders and will continue to be prejudiced by defendants delay.

WHEREFORE, Plaintiffs respectfully request that the Honorable Court **RECONSIDER GRANTING** CEMEX's requested relief included in Motion for Reconsideration; CEMEX's Motion for Brief Stay and ECOTERRA'S URGENT MOTION JOINING CEMEX'S MOTION.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of October, 2007.

CERTIFICATION: I hereby certify that on this day, the present motion was filed the Court's CM/ECF system, which will notify all counsel of record in this case.

INDIANO & WILLIAMS, P.S.C.
207 del Parque Street
Third Floor
San Juan, Puerto Rico 00912
Tel.: (787) 641-4545 / FAX: (787) 641-4544
david.indiano@indianowilliams.com
jeffrey.williams@indianowilliams.com

By: s/ David C. Indiano
DAVID C. INDIANO
U.S.D.C.P.R. Bar No. 200601

By: s/ Jeffrey M. Williams
JEFFREY M. WILLIAMS
U.S.D.C.P.R. Bar No. 202414